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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 BRAIN LIFE, LLC, a Delaware limited
12 liability company,

13 Plaintiff,

14 vs.

15 ELEKTA INC., a Georgia corporation,
16 MEDTRONIC, INC., a Delaware
17 corporation, VARIAN MEDICAL
18 SYSTEMS, INC., a Delaware
19 corporation, BRAINLAB, INC., a
20 Delaware corporation,

21 Defendants.
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CASE NO. 10cv1539-LAB (BGS)

**ORDER ON MOTION FOR
DEFAULT JUDGMENT OR, IN
THE ALTERNATIVE, TO DISMISS
MEDTRONIC'S MOTION TO
DISMISS**

26 After Brain Life filed its original complaint in this case, Defendants Brainlab and
27 Medtronic filed answers, and Defendants Varian Medical Systems and Elekta filed motions
28 to dismiss. The Court denied Elekta's motion to dismiss, without prejudice, and it granted
Varian's motion to dismiss, also without prejudice and with leave to Brain Life to amend its
complaint.

Then Brain Life filed an amended complaint. Brainlab again answered, as did Elekta,
and Varian again filed a motion to dismiss. But Medtronic, which had previously filed an
answer, instead filed a motion to dismiss. Medtronic now argues that the allegations against
it in Brain Life's original complaint were nearly identical to the allegations against Varian that

1 the Court dismissed without prejudice, and that Brain Life failed to modify those allegations
2 against Medtronic in its amended complaint.

3 Brain Life, seizing on the fact that Medtronic initially answered its complaint, now asks
4 the Court to enter default judgment against Medtronic because it has failed to answer the
5 amended complaint. In the alternative, Brain Life asks the Court to essentially strike
6 Medtronic's motion to dismiss and hold Medtronic to its original answer.

7 The motion for a default judgment is a non-starter. Medtronic made an appearance
8 shortly after Brain Life filed its original complaint, it answered that complaint, and it filed a
9 response to Brain Life's amended complaint in the form of a motion to dismiss, which is now
10 fully briefed. Medtronic is clearly able and willing to litigate this case. Brain Life cannot
11 seriously expect the Court to enter judgment against Medtronic under these circumstances.
12 See *In re Hammer*, 940 F.2d 524, 525 (9th Cir. 1991) (explaining that default judgments are
13 "generally disfavored" and that cases should be decided on the merits "whenever it is
14 reasonably possible"). Brain Life's motion is particularly unreasonable considering that
15 Brain Life questions whether Medtronic even had an obligation to respond to the amended
16 complaint in the first place:

17 As to Medtronic, the FAC is identical to the Original Complaint.
18 It would be superfluous to require Medtronic to file an answer.

19 (Dkt. No. 56-1 at 12.) To be fair, Brain Life advances this argument not in favor of default
20 judgment but in favor of striking Medtronic's motion to dismiss, on the assumption that the
21 original complaint was not superceded by the amended complaint with respect to Medtronic.
22 Still, it is essentially Brain Life's position that Medtronic had no obligation to respond in any
23 way to the amended complaint, but because it responded in the way it did judgment should
24 be entered against it. That position is not reasonable, and the motion for default judgment
25 is therefore **DENIED**.

26 The next question is whether Medtronic is bound to the previous answer it filed, or
27 whether the mere fact that Brain Life filed an amended complaint gives it a fresh crack at
28 dismissing Brain Life's claims. Medtronic takes the position that an amended complaint
essentially starts the case over, and even though it answered a prior complaint it is free to

1 move to dismiss an amended complaint. See *Rhodes v. Robinson*, 621 F.3d 1002, 1005
2 (9th Cir. 2010), *Stamas v. County of Madera*, 2010 WL 289310 at *4 (E.D. Cal. Jan. 15,
3 2010). Brain Life argues that the Court only granted it leave to amend its allegations against
4 Varian, and its allegations against Medtronic remained the same. Therefore, the complaint
5 is not amended with respect to Medtronic, and Medtronic is bound by its answer to the
6 original complaint. The question, then, is whether the amended complaint supersedes the
7 original as to *all* Defendants, or only as to Varian.

8 Brain Life concedes the general rule that an amended complaint supersedes its
9 original, and it offers little positive authority for the proposition that this principle has no
10 traction in multiple defendant cases where the allegations against a particular defendant in
11 an amended complaint do not change. The best case it offers is *In re Atlas Van Lines, Inc.*,
12 209 F.3d 1064 (8th Cir. 2000), which it mistakenly cites as 20 F.3d 1064 (Fed. Cir. 2000).
13 In *Atlas*, the Eighth Circuit recognized an exception to the “well-established” rule that “an
14 amended complaint supercedes an original complaint and renders the original complaint
15 without legal effect.” *Id.* at 1067. That exception arose, however, in a particular (and rather
16 convoluted) procedural posture that is not present here. The question here is more basic:
17 Can Medtronic change course and move to dismiss a complaint that it previously answered
18 when the factual allegations against it in the amended complaint are the same?

19 Surprisingly, there is no caselaw that addresses this issue head-on—at least none
20 that the parties identify or that the Court can locate. The Court sides with Brain Life,
21 however. There is no getting around the fact that Medtronic answered Brain Life’s original
22 complaint, and Brain Life filed an amended complaint only to correct the inadequacies the
23 Court found in its claims against Varian. (See Dkt. No. 45 at 20.) The factual allegations
24 against Medtronic remained the same, which was sensible on Brain Life’s part considering
25 that Brain Life had answered them. It’s true, as Medtronic argues in its motion to dismiss,
26 that “[t]he allegations against Medtronic were nearly identical in all material respects to those
27 which the Court found deficient,” and if Medtronic had filed a motion to dismiss rather than
28 an answer the Court would probably have granted it. The Court wouldn’t go so far, however,

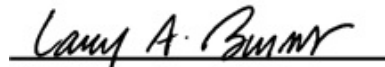
1 to label its ruling on Varian's motion to dismiss "the law of the case" such that Medtronic may
2 now be excused from its answer and benefit from a motion that it strategically chose not to
3 file.

4 If Medtronic were to get its way, defendants in multiple-defendant cases could
5 repeatedly revise their tactical approach when, fortuitously, the claims against another
6 defendant are dismissed without prejudice and a plaintiff is granted leave to amend. The
7 potential for gamesmanship and delay would be great, particularly in cases involving
8 numerous defendants in which a plaintiff is given multiple opportunities to amend. To be
9 clear, the Court is not taking the position that Medtronic has waived the argument that Brain
10 Life has failed to state a claim on which relief can be granted. See Fed. R. Civ. P. 12(h)(2).
11 Medtronic has simply waived the opportunity to make that argument in a Rule 12(b)(6)
12 motion to dismiss.

13 Brain Life's motion to strike Medtronic's motion to dismiss is therefore **GRANTED**.
14 The Court finds no prejudice to Medtronic in this, because it is in no worse position than it
15 was in when it answered Brain Life's original complaint.

16 **IT IS SO ORDERED.**

17 DATED: January 3, 2012

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19 **HONORABLE LARRY ALAN BURNS**
20 United States District Judge
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